

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-7457

To be argued by
ABRAHAM E. FREEDMAN

In The
United States Court of Appeals
For The Second Circuit

JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

vs.

NATIONAL MARITIME UNION OF AMERICA,

Defendant-Appellant-Appellee,

and

JOSEPH CURRAN, SHANNON J. WALL and CHARLES
SNOW,

Defendants-Appellants.

**SEPARATE BRIEF ON BEHALF OF DEFENDANT-
APPELLANT-APPELLEE NATIONAL MARITIME UNION
OF AMERICA**

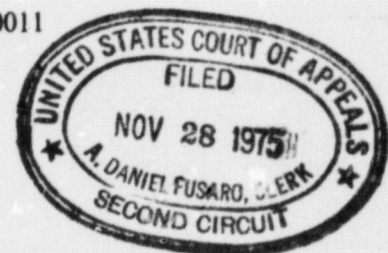
ABRAHAM E. FREEDMAN

Attorney for Defendant-Appellant-Appellee

346 West 17th Street

New York, New York 10011

(212) 929-8410



CHARLES SOVEL
Of Counsel

(8866)

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Plaintiff-Appellant-Appellee,

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and

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SEPARATE BRIEF ON BEHALF OF DEFENDANT-
APPELLANT-APPELLEE NATIONAL MARITIME
UNION OF AMERICA

PRELIMINARY STATEMENT

Defendant-Appellant-Appellee, National Maritime Union of America appeals from so much of the Judgment of the United States District Court for the Southern District of New York (Ward, J.) in this matter as denied the motion of the National Maritime Union of America for Judgement N.O.V. with respect to plaintiffs' claim for compensatory damages and, alternatively, from the failure of the court below to order a new trial.

STATEMENT OF THE CASE

The facts of the case are as set forth in the Core Brief filed on behalf of all defendants-appellants.

ARGUMENT

POINT I

THE COURT BELOW ERRED IN FAILING TO ENTER JUDGMENT
N.O.V. ON PLAINTIFF'S CLAIM FOR COMPENSATORY DAMAGES
AGAINST THE NATIONAL MARITIME UNION OF AMERICA

Under New York law, it is well settled that an unincorporated association cannot be held liable in tort unless the tortious act was either authorized by all the members of the association or duly ratified by them, see Martin v. Curran, 303 N.Y. 276, 78 N.Y.S. 2d 506, 101 N.E. 2d 683 (1951). The court below recognized that this principle was applicable to the instant case and granted Judgment N.O.V. with respect to the verdicts rendered against the National Maritime Union of America for punitive damages. The court below stated:

"Defendants further argue that the verdict must be set aside as a matter of law because the Union cannot be held for punitive damages when the members have not ratified the acts of their officers and employees. Only now, after trial, they present cases supporting this contention. Martin v. Curran, 303 N.Y. 276, 78 N.Y.S. 2d 506, 101 N.E. 2d 683 (1951); Gulickson v. Forest, 290 F. Supp. 457, 469 (E.D.N.Y. 1968). Upon consideration the Court agrees. With respect to the Landrum-Griffin Act claim,

the Court charged that the notice was never duly promulgated by the Union; with respect to the claim of malicious prosecution, there was no evidence that the membership ever ratified the acts of the Union officers and employees. The officers' and employees' actions, although taken ostensibly in their official capacity, were beyond the scope of their authority as officers and employees of the Union.

"Accordingly, defendants' motion to set aside the verdict and enter judgment in their favor is granted insofar as it relates to the award of punitive damages against the Union." (714A-715A)

The court below did not state why it distinguished between the award of compensatory damages and the award of punitive damages with respect to the granting Judgment N.O.V. against the National Maritime Union of America. The cases do not support such a distinction. Where an unincorporated association is not liable for punitive damages because the act in question was not authorized or ratified by the membership of the association, it is likewise not liable for compensatory damages. Accordingly, Judgment N.O.V. should be granted in favor of defendant National Maritime Union of America with respect to the award of compensatory damages.

POINT II

JUDGMENT N.O.V. OR A NEW TRIAL SHOULD BE
GRANTED FOR ALL THE REASONS SET FORTH IN
THE CORE BRIEF

Defendant-Appellant National Maritime Union of America joins in the points raised in the Core Brief filed on behalf of all defendants-appellants in this matter, and urges the Court to grant Judgment N.O.V., or, failing that, a new trial, for all the reasons set forth in the Core Brief.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

Respectfully submitted,

ABRAHAM E. FREEDMAN
Attorney for Defendant-
Appellant-Appellee
National Maritime Union of
America

OF COUNSEL:

CHARLES SOVEL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No.

JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

- against -

NATIONAL MARITIME UNION OF AMERICA,

Defendant-Appellant-appellee.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK

SS.:

I, Eugene L. St. Louis being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at

1235 Plane Street, Union, N.J. 07083
That on the 28th day of October 19 75, deponent served the annexed *Brin*

upon 1) Harold E. Kohn P.A.
2) Kenneth J. Finger

attorney(s) for

in this action, at 1) 1700 Market Street, Phila, Pa.,
2) 14 Mamaroneck Ave, White Plains, N.Y.

the address designated by said attorney(s) for that
purpose by depositing ² a true copy ^{es} of same, enclosed in a postpaid properly addressed wrapper in a
Post Office Official Depository under the exclusive care and custody of the United States Post Office
Department, within the State of New York.

Sworn to before me, this 28th
day of October 19 75

Robert T. Brin

Eugene L. St. Louis
Print name beneath signature
EUGENE L. ST. LOUIS

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

- against -

NATIONAL MARITIME UNION OF AMERICA,

Defendant-Appellant-Appellee

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

NEW YORK

ss.:

I, James A. Steele, being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
310 W. 148th St., New York, N.Y.

That on the 28th day of October 1975 at see attached

deponent served the annexed *Brin*

upon

see attached

the Attorney in this action by delivering ² a true copy ^{ss} thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 28th
day of October 19 75

Robert T. Brin

James A. Steele
JAMES A. STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

FEDER KASOVITZ & WEBER
450 Seventh Ave.
New York, N.Y.

~~ABRAHAM E. FREEDMAN~~
~~346 West 17th Street~~
~~New York, N.Y.~~

DUER & TAYLOR
74 Trinity Place
New York, N.Y.

BLOOM & EPSTEIN
110 East 42d Street
New York, N.Y.